IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

CHAMBER SUMMONS NO. 208 OF 2007
IN
SUIT NO. 1313 OF 1979

Rekha Punjabi . .. Plaintiff
V/S
Devkumar Pranlal Jogi & ors. ... Defendants

Mr. Berjis Colabawala i/b. Wadia Gandhy for petitioner / applicant.
Mr. Panambur Oak for defendants

CORAM: **D.G. KARNIK J.**

DATE: March 5, 2007

P.C.:

1. Heard learned counsel for the parties.
2. By this Chamber Summons the plaintiff prays for substitution of issue no.9 by another issue. Issue no.9 as framed by the court reads thus:

   "Is the plaintiff in the alternative entitled to claim damages of Rs.2,00,000/- for breach of contract committed by the defendants.?"
3. Learned counsel for the plaintiff submits that instead of limiting the damages to Rs.2 lakhs the court should have kept the question of amount of damages open. In other words the

court should frame an issue whether the plaintiff was entitled to damages and if so in what sum?. In the suit the plaintiff has claimed damages of Rs.2 lakhs. Hence, in my view the issue is correctly framed. Section 21 of the Specific Relief Act contemplates that the damages can be claimed if the contract has been broken. The measure of damages under section 73 of the Contract Act is the difference between the contract price and market on the date of breach. Such damages can always be ascertained. Plaintiff cannot claim unascertained damages and request the court to frame an issue regarding damages without specifying the amount claimed as damages. By proposing an amendment to the issue the plaintiff is claiming unascertained sum as damages, which in my view cannot be done.

4. Learned counsel for the plaintiff refers to the decision of the Calcutta High Court in Khatun Bibi vs. Lilabati Dassi reported in A.I.R. (36) 1949 Calcutta 128 and submits that the amount of compensation would be on the footing that the agreement is subsisting and not damages for the breach of the agreement. With great respect, I am unable to agree with the submission.
5. For these reasons there is no merit in the Chamber Summons which is dismissed with costs quantified at Rs.500/-.

(D.G. KARNIK J.)